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 KELLER WILLIAMS REALTY, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

STEVE TRACHSEL, an individual, SUN CITY
 TOWERS, LLC, a California corporation, THOMAS
 CIRrito, and individual, ATOCHA LAND, LLC,
 a Delaware limited liability company, MICHAEL
 CIRrito, and individual, and CIRrito
 HOLDINGS, LLC, a Delaware limited liability
 company,

Plaintiffs,

vs.

RONALD BUCHHOLZ, CHARICE FISCHER,
 RDB DEVELOPMENT, LLC, a Nevada limited
 liability company, SOLOMON CAPITAL, LLC, a
 Nevada limited liability company, JONATHON
 VENTO, GRACE CAPITAL, LLC, dba GRACE
 COMMUNITIES, an Arizona limited liability
 company, DONALD ZELENZAK, Z-LOFT, LLC,
 an Arizona limited liability company, ZELENZAK
 PROPERTY MANAGEMENT, LLC dba KELLER
 WILLIAMS REALTY, INC., a Texas corporation,
 and DOES 1-50, inclusive,

Defendants.

CASE NO. C08-2248 RMW
 [Assigned to Judge: Hon. Ronald M.
 Whyte]

**CASE MANAGEMENT
 STATEMENT**

Date: September 5, 2008
 Time: 10:30 a.m.
 Dept. Courtroom 6
 Judge: Hon. Ronald M. Whyte

Defendant KELLER WILLIAMS REALTY, INC. ("KWRI") hereby submits this Case
 Management Statement for the Conference scheduled for September 5, 2008.

1 **1. Jurisdiction and Service**

2 Plaintiffs claim to have jurisdiction under 28 U.S.C. §1331, federal subject matter
3 jurisdiction, pursuant to RICO, Rule 10b-5 and Section 12a. Plaintiffs further allege jurisdiction
4 based on 28 U.S.C. §1332(d)(2), diversity of citizenship, because all Plaintiffs reside in different
5 states than all Defendants, and the amount in controversy exceeds \$75,000.

6 **2. Facts (as alleged)**

7 Plaintiffs filed their Complaint on or about April 30, 2008. The Complaint was served
8 upon KWRI on or about May 6, 2008. Plaintiffs' Complaint alleges eighteen causes of action
9 against thirteen different defendants. As against KWRI, Plaintiffs allege the following counts:

- 10 • *Count 3* for Violation of Section 1962(d) of the RICO Act
- 11 • *Count 4* for Violation of Section 10B and Rule 10B-5 of the 1934 Act
- 12 • *Count 5* for Violation of Section 12(a) of the 1933 Act
- 13 • *Count 6* for Violation of California Business & Professions Code Section 17200, et seq.
- 14 • *Count 11* for Conspiracy
- 15 • *Count 16* for Joint and Several Liability of Management Principals and Materially Aiding
- 16 Personnel Pursuant to California Corporations Code sections 25501, 25401 and 25504
- 17 • *Count 18* for Joint and Several Liability of Management Principals and Materially Aiding
- 18 Personnel Pursuant to California Corporations Code section 25503, 25102(f) and 25510.

19 Plaintiffs allegedly invested a real estate development called the Solomon Towers
20 project, located in Arizona (hereinafter "project."). The investments for the project were made
21 through defendant Solomon Capital, LLC, an investment firm. According to the Complaint,
22 defendants Ronald Buchholz, Charice Fischer and RDB Development, LLC all worked with or
23 for Solomon Capital in connection with obtaining investment capital from Plaintiffs (collectively
24 the "Solomon Capital defendants"). In February 2005, the Solomon Capital defendants allegedly
25 gave a presentation to Plaintiffs regarding the project, wherein they represented that the project
26 constituted a viable investment opportunity. In March 2005, Plaintiffs allegedly entered into an
27 Operating Agreement whereby they agreed to invest funds with Solomon Towers, LLC for the
28 project. The project is now reportedly in financial distress and Plaintiffs allege that the Solomon

1 Capital defendants misrepresented the investment opportunity, to Plaintiffs' detriment.

2 In April 2005, Solomon Towers, LLC purchased property for the project from defendant
3 Z-Loft, LLC. Z-Loft LLC is apparently owned and managed by defendant Donald Zeleznak. Z-
4 Loft, formerly known as Soho Lofts, LLC, had allegedly purchased the subject property in July
5 2002. According to the Complaint, Z-Loft sold the property for a significant amount more than
6 what it had paid three years prior, and realized a sizeable profit. ZPM and Zeleznak are alleged
7 to have acted as both the real estate agent and the broker in connection with the April 2005 sale.
8 Due to the increased property price and the large commissions received by ZPM and Zeleznak,
9 the Complaint labels the sale of the property as a "pump and dump" transaction and/or a "wash
10 sale."

11 Aside from Mr. Zeleznak's alleged involvement with the Solomon Towers presentation,
12 it is not clear from the Complaint how the Solomon Capital defendants had any other
13 involvement with the Z-Loft, ZPM, or Grace Capital defendants prior to the sale of the Solomon
14 Towers property in April 2005. However, Plaintiffs allege that defendants Buchholz, Fischer
15 and Solomon Capital "shared in the ill-gotten gains from the 'pump and dump' transaction to the
16 detriment of the Plaintiff investors."

17 The Defendants disagree with the facts as alleged by Plaintiffs and several have filed
18 motions challenging the sufficiency of the complaint.

19 **3. Legal Issues**

20 The primary legal issues pertaining to KWRI at the time are presented in the motion to
21 strike (discussed immediately below).

22 **4. Motions**

23 KWRI filed a motion to dismiss each count of Plaintiffs alleged against KWRI. The
24 motion will be heard on September 5, 2008 at 9:00 a.m. by the Hon. Ronald Whyte. The ruling
25 on this motion will substantially impact the posture of this matter.

26 Other parties have filed numerous motions that have already been heard or are pending
27 (application for a TRO, application for a writ of attachment, motion to dismiss, motion to lift
28 discovery stay, etc.).

5. Amendment of Pleadings

Other than the potential striking of counts of the complaint after KWRI's motion to strike is heard, KWRI is not aware of any other potential pleading amendments at this time.

6. Evidence Preservation

KWRI is unaware of any evidence preservation issues at the time.

7. Disclosures

The case is not yet at issue with respect to KWRI so there has been no agreement as to disclosures.

8. Discovery

A discover stay is currently in place due to the filing of several motions to dismiss pursuant to 15 U.S.C. §78u-4(b)(3)(B). In addition, KWRI has not discussed or reached any agreements with other parties regarding discovery at this time because the case is not yet at issue with respect to KWRI.

9. Class Actions

Not applicable.

10. Related Cases

Not applicable.

11. Relief

The primary relief sought by Plaintiffs is the rescission of the purchase and recovery of the investment capital. Plaintiffs also seek actual damages, interest on the investment capital, attorneys fees, costs and injunctive relief.

12. Settlement and ADR

KWRI understands that the other parties previously agreed to mediation and scheduled a session that was eventually cancelled. In the event that KWRI is not dismissed, it is amendable to mediation.

13. Consent to Magistrate Judge for All Purposes

In the event that KWRI is not dismissed, it would consent to a magistrate judge.

KWRI would consider reference to a discovery referee and settlement judge as appropriate.

The case is not yet at issue with respect to KWRI so the issues are unknown at this time.

The case is not yet at issue with respect to KWRI so a schedule has not yet been discussed.


The case is not yet at issue with respect to KWRI so a schedule has not yet been discussed.

There is no trial date at this time.

The case is not yet at issue with respect to KWRI so there has been no such disclosure. The appropriate disclosure will be made in the event that KWRI is not dismissed from the action after its motion is heard.

Dated: 8/29/08

GORDON & REES LLP

By: 

 DION N. COMINOS
 MEAGEN E. LEARY
 Attorneys for Defendant KELLER
 WILLIAMS REALTY, INC.

1 : Steve Trachsel, et al. v. Ronald Buchholz, et al.
2 United States District Court Northern District of California, San Jose Division
3 Case No. No. C08 02248

4 **PROOF OF SERVICE**

5 I am a citizen of the United States. My business address is 275 Battery Street, San
6 Francisco, CA 94111. I am employed in the City and County of San Francisco where this
7 service occurs. I am over the age of 18 years and not a party to the within action.


8 On August 29, 2008, following ordinary business practice, I served a true copy of the
9 foregoing document(s) described as:

10 **CASE MANAGEMENT STATEMENT**

- 11 ☒ **BY (CM/ECF) ELECTRONIC CASE FILE SYSTEM:** with the United States
12 District Court, Northern District, to all parties listed on the court's proof of electronic
13 service.
14 ☐ **BY FACSIMILE:** by transmitting by facsimile to the number(s) listed above to the
15 fax number(s) set forth below, or as stated on the attached service list, on this date
16 before 5:00 p.m.
17 ☐ **PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand this date
18 to the offices of the addressee(s).
19 ☐ **MAIL:** I caused such envelope(s) with postage thereon fully prepaid to be placed in
20 the United States mail at Sacramento, California to the offices of the addressee(s)
21 listed below:
22 ☐ **OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to an
23 overnight delivery carrier with delivery fees provided for, addressed to the person(s)
24 on whom it is to be served.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on August 29, 2008 at San Francisco, California.

28 

Sandra Sarmiento

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